IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 3611 of 2007()

S.T.NO.6305 OF J.C.M-III, THRISSUR

PETITIONER: ACCUSED NO. 1 & 2

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1. SR.PATIENCE ,AGED 66 YEARS
   MOTHER PROVINCIAL BETHANY SISTERS
   PROVINCIALATE ANCHELPETTY P.O.
   PAMPAKUDA ,MOOVATTUPUZHA.

2. SR.EVANIYA AGED 45 YEARS,
   BETHANY SISTERS PROVINCIALATE ANCHELPETTY P.O.
   PAMPAKUDA ,MOOVATTUPUZHA.

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS: COMPLAINANT/STATE

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1. K.M.ABDUL ASHARAF S/O.MOIDEENKUTTY
   KAYAMKULAM HOUSE, KARUVANKADU, MADAKATHARA P.O.
   THRISSUR DISTRICT.

2. STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No. 3611 of 2007

Dated this the 3rd day of December, 2007

ORDER

Petitioners face indictment in a prosecution under Section 138 of the Negotiable Instruments Act. They do not dispute the fact that the cheque duly signed was handed over to the complainant. But they have a contention that the cheque was not issued for the due discharge of any legally enforcible debt or liability. The petitioners have now come to this Court with a prayer that the extraordinary inherent jurisdiction under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioners.

2. What is the ground ? The short ground urged is that the cheque was not issued for the due discharge of any legally enforcible debt/liability. That is a contention which the petitioners must raise in the trial to be held. The presumption under Section 139 Cr.P.C does also stare on the petitioners. In these circumstances, the contention that the prosecution is liable to be quashed invoking the powers under Section 482 Cr.P.C

cannot obviously succeed. I am not adverting to details of the contentions or any conclusions, lest it might adversely affect the contentions to be raised by the parties before the court below. Suffice it to say that I find absolutely no satisfactory reasons to invoke the powers under Section 482 Cr.P.C.

3. A contention is raised that the Chief Judicial Magistrate, before whom the complaint was filed, has no territorial jurisdiction. The complainant has his place of residence within the jurisdiction of Viyyur Police Station and there is no contention before me that the learned C.J.M has no jurisdiction over the Viyyur Police Station. The decision in **Bhaskaran v. Balan** [1999 (3) K.L.T 440 (SC)] makes it clear that concatenation of the 5 events shall constitute the offence and the happening of any one of the 5 events shall confer jurisdiction on the court. Payment is to be made to the complainant and the permanent address of the complainant, there is no dispute before me, is within the jurisdiction of Viyyur Police Station. In these circumstances, the contention that the learned C.J.M has no territorial jurisdiction to entertain the complaint is also found to be without any merit.

4. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this petition will not in any way fetter the rights of the petitioners to raise all relevant and appropriate contentions before the learned Magistrate in the course of trial.

5. The learned counsel for the petitioners submits that if unnecessary insistence on personal appearance were made by the learned Magistrate, it would cause great hardship and loss to the petitioners, who are nuns, having their permanent residence at Muvattupuzha. The petitioners have already appeared and have been enlarged on bail by the learned Magistrate, it is submitted. I fail to understand why any court must insist on unnecessary personal appearance of the petitioners on all dates of posting. The petitioners can apply for exemption under Section 205 Cr.P.C. Needless to say that the learned Magistrate has to consider such application on merits and in accordance with law.

(R.BASANT, JUDGE)

rtr/-